IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 286

THE PROOF COMPANY, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Proof Company, an Ohio corporation, prays that a writ of certiorari be issued to review the decree of the United States Court of Appeals for the Seventh Circuit entered on April 25, 1957.

OPINIONS BELOW

The opinion of the Court of Appeals is as yet unreported but is set forth in full in Appendix A to this petition, *infra*, p. 1a. That opinion granted the National Labor Relations Board's (hereinafter sometimes referred to as the Board) Petition for Enforce-

ment of an Order of the Board, which Order is printed on pp. 78-81 of the certified Transcript of Record filed with this petition. The Board's Order adopts the Intermediate Report and Recommended Order of its Trial Examiner, reprinted on pp. 51-73 of the Record.

JURISDICTION

The herein involved Decree Enforcing An Order Of The National Labor Relations Board was dated and entered by the Court of Appeals for the Seventh Circuit on April 25, 1957. No petition for rehearing was filed. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

1. Does good faith compliance with Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act require that an employer be permanently bound by "temporary" arrangements of convenience made with a bargaining agent during the course of negotiations?

2. Is the one year period of required recognition of a bargaining agent mandatory in the face of good evidence of loss of majority status together with incidents of physical violence arising therefrom?

STATUTES INVOLVED

The particular statutory provisions involved are the following portions of 29 U.S.C. Sec. 158:

> (a) It shall be an unfair labor practice for an employer:
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 157 of this title;
>
> * * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 159(a) of this title.

These provisions will hereinafter be referred to, respectively, as Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act.

STATEMENT OF THE CASE

This case arises out of a National Labor Relations Board hearing on alleged unfair labor practices and refusal to bargain by The Proof Company, Petitioner herein. The Board's Decision and Order (R. 78-81), 115 NLRB 53, issued on February 3, 1956, found that The Proof Company committed unfair labor practices, in violation of Section 8(a)(1) of the National Labor Relations Act, by unilaterally and without notice to the Union rescinding the preferential seniority temporarily granted to Union officials, and by likewise refusing to permit the Union to post notices on a plant bulletin board. The Board further found that The Proof Company refused to bargain with the certified bargaining agent in violation of Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act.

The Union involved herein, The International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, Local 943, was certified as bargaining agent as of June 28, 1954. Thereafter, bargaining conferences were held on July 12, 13, 21, August 9 and 19. During the course of these negotiations the Union presented a written temporary agreement. The company refused to sign this, but did agree that during negotiations the company would recognize preferential seniority for Union

officials and would allow the Union to use the plant bulletin board for notices (R. 29-30, 39)

The bargaining sessions were broken off on August 19 subject to further notice from either party. Shortly thereafter a petition for decertification of the bargaining unit was filed with the Board signed by approximately 163 of the company's employees. On or about September 10 the company had a lay-off of employees during the course of which the company failed to recognize the "super seniority" of Union officers and, further, the company locked the plant bulletin board which had been the scene of certain physical violence at the plant in regard to posting of notices by rival groups.

After the entry of the Board's Order on February 3, 1956, the Board subsequently filed a Petition for Enforcement in the United States Court of Appeals for the Seventh Circuit on July 24, 1956. The case was argued on December 14, 1956, and the Court's Opinion was rendered on March 27, 1957, deciding in favor of enforcement of the Board's Order. The Court of Appeals' Decree enforcing the Order was entered on April 25, 1957, but has been stayed, on petition of The Proof Company, until July 17, 1957 pending the filing of a petition for writ of certiorari herein.

This case involves interpretation of the National Labor Relations Act, as amended, particularly Sections 8(a)(1) and 8(a)(3) thereof, in proceedings arising under that Act. Federal jurisdiction is based upon those questions of interpretation.

REASONS FOR GRANTING WRIT

I

RE QUESTION 1: DOES GOOD FAITH COMPLIANCE WITH SECTIONS 8(a)(1) AND 8(a)(5) OF THE NATIONAL LABOR RELATIONS ACT REQUIRE THAT AN EMPLOYER BE PERMANENTLY BOUND BY "TEMPORARY" ARRANGEMENTS OF CONVENIENCE MADE WITH A BARGAINING AGENT DURING THE COURSE OF NEGOTIATIONS?

A. The Court of Appeals Has Incorrectly Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court. The Question is of Extreme Importance to the Future Conduct of Labor Negotiations

The Petitioner herein believes this question is of extreme importance because of the wide spread usage in labor management relations of the temporary verbal understanding. The use of such temporary understandings is extremely valuable in promoting the purposes of the National Labor Relations Act by avoiding industrial strife by the use of such temporary arrangements where no long term understanding or agreement is intended. As an example, it is common practice in labor negotiations for each side to agree to extend a current or expiring contract on a temporary basis while the parties strive for a permanent agreement. It would be unfortunate if, as a result of the reasoning of the Court of Appeals in this case, an employer or a union would be bound to continue negotiations interminably by reason of such a temporary understanding. In the present case, by reason of the employer having reached a verbal understanding with the union to recognize "super seniority" for union officers and to allow the union temporary use of a plant bulletin board during the course of negotiations, the employer is held to have engaged in an unfair labor practice when, after the breakdown of negotiations, the employer ceased to continue to

recognize these temporary arrangements of convenience. The effect of this holding, if sustained by this Honorable Court, will be that both employers and unions in the future will refuse any and all such temporary arrangements because they would be permanently bound by them.

To be sure, the Petitioner herein does not intend to include within the scope of this question any agreements reduced to writing and of even a semi-permanent nature. The National Labor Relations Board itself has long held that permanent type agreements are to be reduced to writing. *N.L.R.B.* v. *Grace Co.*, 184 F. (2d) 126 (CA 8, 1950). Any agreements reached between the employer and the union of a nature sufficient to be reduced to writing should be binding upon both parties for the duration of said agreement. Here, however, there was no understanding between the parties as to the duration of the temporary understanding.

It was of course anticipated in the beginning that the parties would eventually reach a written agreement covering all aspects of the employer employee relationship. When it became apparent that the parties were in such irreconcilable conflict as to the terms of such an agreement, then the Petitioner herein contends that it should no longer be bound by the prior temporary understanding. Indeed, it is clear from the record that the temporary understandings were giving rise to chaotic conditions within the plant because of the sharp division of opinion among the employees (R. 40).

Finally, the Petitioner strongly urges that if this Honorable Court does not condone the use of tem-

porary understandings between the parties without fear of permanency, the smooth flow of labor management relations will be seriously interfered with and the purposes of the National Labor Relations Act in avoiding industrial strife will be frustrated.

B. The Decision of the Court of Appeals is in Direct Conflict With a Decision of the Court of Appeals for the Eighth Circuit

The Petitioner herein believes that the present holding is in direct conflict with the case of *N.L.R.B.* v. *Nash-Finch Co.*, 211 F. (2d) 622 (C.A. 8, 1954), where the court held that withdrawal of an insurance and bonus plan unilaterally by an employer was not unlawful where the contract with the bargaining agent did not require the employer to maintain such a plan. It is the Petitioner's contention herein that upon the breakdown of negotiations on August 19, 1954, there was no longer even a verbal agreement with the bargaining agent covering the two items referred to above.

The Petitioner most strongly urges that this Honorable Court rule on the apparent conflict between the Circuit Courts of Appeal for the Seventh and Eighth Circuits on the question of whether the employer may unilaterally discontinue the benefits or working conditions which are not the subject of permanent agreements with the bargaining agent.

RE QUESTION 2: IS THE ONE YEAR PERIOD OF REQUIRED RECOGNITION OF A BARGAINING AGENT MANDATORY IN THE FACE OF GOOD EVIDENCE OF LOSS OF MAJORITY STATUS TOGETHER WITH INCIDENTS OF PHYSICAL VIOLENCE ARISING THEREFROM?

A. The Court of Appeals Has Incorrectly Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court. The Question is of Extreme Importance to the Future Conduct of Labor Negotiations

In presenting this question for review the Petitioner is not unmindful of the recent holding of this Honorable Court in *Brooks* v. *N.L.R.B.*, 348 U.S. 96, 75 S. Ct. 176. In that case it was held that informal repudiation of a bargaining agent by employees would not be sanctioned during the one year period where decertification by another election is precluded. A careful reading of the holding in that case, however, shows that this ruling only applies to the one year period, and if the employer has fair doubts about the union's continuing majority he may refuse to bargain further with it. In the present case the bargaining negotiations had reached an impasse (R. 49-50). Petitioner, as noted in part I, *supra*, believes that no unfair labor practices intervened to extend the one year period of required bargaining. Nevertheless, on April 25, 1957, almost three years after the bargaining agent's original certification date, Petitioner is ordered to resume bargaining with the certified union. It seems that thi holding is in conflict with *Swift and Company*, 94 NLRB 917, in which the Board itself ordered a new election where the schism within the union developed within seven months after the certification date of the bargaining agent, holding that inasmuch as the order itself did not enter until 17 months after the certification date, the one year rule was therefore complied with.

Petitioner further contends that the holding of this Honorable Court in *Brooks, supra*, was not intended to completely close the door on the "unusual circumstances" rule even within the one year period. This is acknowledged by the Board on page 6 of its brief filed before the Court of Appeals in this matter, wherein one of the propositions of law relied upon by the Board is stated as follows:

> I. *Absent unusual circumstances*, an employer is obligated to bargain with a certified union for a reasonable period of time, normally one year after the date of the certification. [Italics added.]

It would be indeed unfortunate if this Honorable Court were not to retain the authority to make certain exceptions to the one year rule where unusual circumstances are present, such as actual physical violence within the plant because of the extreme antagonism of many employees to the bargaining agent (R. 40). To require employees to be represented by a bargaining agent where their antipathy has reached the point of physical violence would seem to be in direct conflict with the expressed purposes of the National Labor Relations Act, which was set up to prevent "industrial strife which interferes with the normal flow of commerce," 29 U.S.C. Section 141(b).

We do not here contend that the unruly action of a small minority in a plant should be seized upon as justification for refusing to bargain with a certified bargaining agent. However, the record here shows that there was a petition filed with the Regional Office of the National Labor Relations Board signed by 103 employees of the company requesting decertification in early September of 1954 (R. 18 and 76). This num-

ber is compared to the total union membership of between 133 and 166 members (R. 47), and after two separate reductions in the number of employees by the company (R. 33). The Petitioner contends that the evidence of dissatisfaction with the bargaining agent shown by the signing of the decertification petition to the Board by 103 employees, together with actual instances of physical violence within the plant itself, gives rise to such unusual circumstances as to warrant an exception to the one year rule of required bargaining, and it is also such clear and convincing evidence to the employer as to raise reasonable doubts in the employer's mind of the union's continuing majority status.

CONCLUSION

For the foregoing reasons the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

OPINION AND DECREE OF THE COURT OF APPEALS

1. Opinion

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 11828 SEPTEMBER TERM, 1956 JANUARY SESSION, 1957.

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

THE PROOF COMPANY, *Respondent*.

On Petition for Enforcement of an Order of the National Labor Relations Board.

March 27, 1957

Before FINNEGAN, LINDLEY and SCHNACKENBERG, *Circuit Judges*.

SCHNACKENBERG, *Circuit Judge*. By its petition, the National Labor Relations Board seeks enforcement of its order against The Proof Company, respondent herein and referred to in this opinion as the "Company".

On June 28, 1954, following a consent election, the Board certified the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 943 (referred to herein as the "Union") as exclusive bargaining representative of the Company's employees. After certification and an exchange of correspondence, the two parties met five times during July and August of 1954 for negotiation purposes. Pending consummation of a final agreement the Union submitted a proposed "temporary agreement" which included, *inter alia*, grievance adjustment procedure, provisions for union security, checkoff of fees and dues and use of company bulletin boards.

The Company took the position that it should not be required to join in such a temporary agreement and did not, in fact, sign it.

The Company admits that, in response to a request by the Union, it temporarily allowed preferential seniority to officers of the Union and the members of its bargaining committee from the time of the discussion of the agreement until negotiations were suspended on August 19, 1954. At some time during the negotiation meetings the Company agreed that the Union could, for its proper purpose, utilize a bulletin board previously installed by the Company. The record shows that the Union did so use the board until late October, 1954. The parties did not succeed in reaching a final agreement by August 19th and negotiations were suspended on that date subject to the call of either party for further bargaining meetings.

On September 10th the Company unilaterally and without notice to the Union withdrew the preferential seniority which it had heretofore granted and put into effect. In October the Company, again without notice to the Union, discontinued its practice of permitting the Union to post notices on the plant bulletin board, nailed the board shut, and thereafter removerd notices which the Union posted on plant property.[1]

In the meantime a petition signed by a majority of the bargaining unit was filed with the Regional Director of the Board asking that the Union be decertified. On September 15, 1954, the Regional Director dismissed the petition as untimely. No appeal was taken.

[1] The record shows that Charles V. Kilburn, president of the Company, testified that as to the use of the bulletin board, "It got to be a chaotic situation where another group and theinselves [the group desiring decertification and the Union] were both trying to post notices and it got to a point that employees were almost at blows, instead of attending to their work. I decided we would nail the bulletin board shut and it would not be used by anyone."

On and after September 13, 1954, the Union made repeated requests for further bargaining conferences, which the Company rejected on the ground that the Union no longer represented a majority of the employees in the appropriate bargaining unit even though the Company knew after September 15th that the petition for decertification had been dismissed.

Upon the foregoing facts the Board concluded that the Company violated Section 8(a) (1) and (5) of the National Labor Relations Act[2] in that, less than three months after a valid certification, it refused to bargain collectively with the Union, and concluded further that respondent independently violated Section 8(a) (1) of the same act by, unilaterally and without notice to the Union, revoking the preferential seniority previously accorded the officers of the Union and the members of its bargaining committee and denying the Union use of the plant bulletin board for the posting of notices.

Accordingly, the Board ordered respondent to cease and desist from engaging in the unfair labor practices found, to bargain collectively with the Union upon request and to post appropriate notices.

It is this order that the Board seeks to enforce in this proceeding.

1. The Company asserts that the events surrounding the suspension of negotiations with the Union in this cause constituted such unusual circumstances that the Company was justified in refusing to bargain further with the Union. However, it acknowledges that, absent such unusual circumstances, an employer is obligated to bargain with a certified union for a reasonable period of time, normally one year after the date of the certification. *N.L.R.B.* v. *Armato*, 199 F. 2d 800 and *N. L. R. B.* v. *Heide, Inc.*, 219 F.2d 46. In the case of *Brooks* v. *N.L.R.B.*, 348 U.S. 96,

[2] 61 Stat. 136, 29 U.S.C.A. § 158(a) (1) and (5).

which is factually similar to the case at bar, the Supreme Court said, at page 98:

> "The issue before us is the duty of an employer toward a duly certified bargaining agent if, shortly after the election which resulted in the certification, the union has lost, without the employer's fault, a majority of the employees from its membership."

On this issue the Supreme Court held that, notwithstanding repudiation of the bargaining agent by the majority of the employees, the employer was obligated to honor the certification for a reasonable period of time, normally one year, and that the refusal to do so constituted a violation of Section 8(a) (1) and (5) of the Act.

We hold that there were no unusual circumstances in this case sufficient to avoid application of the one-year rule. The fact that here, as in *Brooks*, a majority of the employees may have repudiated the Union, or may have indicated a desire for different representation, does not absolve the employer of his bargaining obligation. Failure to fulfill that obligation constituted a violation of Section 8(a) (1) and (5) of the National Labor Relations Act. *Brooks* v. *N.L.R.B.*, 348 U.S. 96.

2. An employer must bargain with the duly designated representative of his employees concerning changes in the terms and conditions of employment and unilateral action in that regard is a violation of Section 8(a) (1). As was said in *Armstrong Cork Co.* v. *N. L. R. B.*, 211 F.2d 843, at 847:

> "Good faith compliance with Section 8(a) (5) and (1) of the Act presupposes that an employer will not alter existing 'conditions of employment' without first consulting the exclusive bargaining representative selected by his employees, and granting it an opportunity to negotiate on any proposed changes."

Nor can it be doubted that seniority provisions and bulletin board use are among those "conditions of employ-

ment" which the Act requires to be the subjects of collective bargaining. *Inland Steel Co.* v. *N. L. R. B.*, 170 F.2d 247, 252 and *N. L. R. B.* v. *Reed & Prince Mfg. Co.*, 205 F.2d 131, 136.

The Company seems to feel that, insofar as its concessions with regard to preferential seniority and the bulletin board were regarded by it as of a temporary or interim nature pending final agreement on the complete contract, it had a right to rescind its concessions at any time. In this there is error. They were changes in the conditions of employment, suggested by the Union and agreed to by the Company. The informal nature of their origin does not exclude them from the dignity of agreements on working conditions or render them subject to unilateral action by either party. They were temporary only in the sense that they might subsequently be changed by the parties or included in a general agreement covering all working conditions and terms of employment.

In accordance with the views herein expressed, the order of the Board entered February 3, 1956, will be enforced by this court.

ENFORCED.

FINNEGAN, *C. J.*, concurs in result.

2. Decree

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 11828

April 25, 1957

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

vs.

THE PROOF COMPANY, *Respondent*.

DECREE ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before: FINNEGAN, LINDLEY and SCHNACKENBERG, *Circuit Judges*.

This cause came on to be heard upon the petition of the National Labor Relations Board to enforce its order dated February 3, 1956. The Court heard argument of respective counsel on December 14, 1956, and has considered the briefs and the transcript of record filed in this cause. On March 27, 1957, the Court, being fully advised in the premises, handed down its decision enforcing the said order. In conformity therewith it is hereby

ORDERED, ADJUDGED AND DECREED that the Respondent, The Proof Company, Goshen, Indiana, its officers, agents successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, (UAW-AFL-CIO), Local No. 943, (herein called the Union), as the exclusive representative of its production and maintenance employees, excluding office clerical employees, watchmen and guards, and professional and supervisory employees as defined in the National Labor Relations Act, as amended (herein called the Act).

(b) Refusing to recognize the preferential seniority granted to the officers and members of the bargaining committee of the Union according to the request of the Union and the agreement of the Proof Company thereto on or about August 19, 1954; and from refusing the Union a proper and reasonable use of a bulletin board within its plant.

2. Take the following affirmative action which the National Labor Relations Board has found will effectuate the policies of the Act:

(a) Upon request bargain collectively with the Union, as the exclusive representative of the employees in the bargaining unit hereinabove described with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody it in a signed agreement.

(b) Post at its Goshen, Indiana, plant, copies of the notice attached hereto and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the National Labor Relations Board for the Thirteenth Region, Chicago, Illinois, shall, after being duly signed by a representative of the Respondent, be posted by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by other material.

(c) Notify the aforesaid Regional Director, in writing, within ten (10) days from the date of this Decree, what steps the Respondent has taken to comply herewith.

/s/ WALTER C. LINDLEY
Judge, United States Court of Appeals for the Seventh Circuit

/s/ ELMER J. SCHNACKENBERG
Judge, United States Court of Appeals for the Seventh Circuit

APPENDIX A

NOTICE TO ALL EMPLOYEES PURSUANT TO

a Decree of the United States Court of Appeals, Enforcing an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will bargain collectively, upon request, with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, (UAW-AFL-CIO), Local No. 943, as the exclusive representative of the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment.

The bargaining unit is:

All production and maintenance employees excluding office clerical employees, watchmen and guards, and professional and supervisory employees as defined in the Act, employed at our Goshen, Indiana, plant.

We Will Not interfere with, restrain, and coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act by refusing to recognize the preferential seniority heretofore granted to the officers and members of the bargaining committee of the Union, or refusing the Union the proper use of a bulletin board within our plant, or in any like manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

THE PROOF COMPANY
(Employer)

By
(Representative) (Title)

Dated

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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No. 286

In the Supreme Court of the United States

OCTOBER TERM, 1957

THE PROOF COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*):	
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NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. App. A) is reported at 242 F. 2d 560. The findings of fact, conclusions of law, and order of the Board (R. 51–81) are reported at 115 NLRB 309.

JURISDICTION

The judgment of the court below (Pet. App. A) was entered on April 25, 1957. The petition for certiorari was filed on July 17, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254. See also Section 10 (e) of the National Labor Relations Act, as amended, 29 U. S. C. 160 (e).

QUESTIONS PRESENTED

1. Whether the court below properly held that petitioner violated Section 8 (a) (5) and (1) of the National Labor Relations Act when it refused to bargain with the Union within three months after certification by the National Labor Relations Board as the employees' bargaining representative.

2. Whether the court below properly held that petitioner violated Section 8 (a) (1) of the Act by rescinding, unilaterally and without notice to the Union, a preferential seniority practice and also by discontinuing the practice of permitting the Union to use the bulletin board for posting notices.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth in the petition for certiorari, pp. 2–3.

STATEMENT

A. *The Board's findings of fact.* Briefly, the Board found that petitioner violated Section 8 (a) (5) and (1) of the Act by refusing to bargain collectively with the Union (International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 943) less than three months after it had been certified by the Board as bargaining representative of petitioner's employees. The Board also found that petitioner independently violated Section 8 (a) (1) of the Act by unilaterally and without notice to the Union rescinding the preferential seniority granted to Union officials, and like-

wise by withdrawing from the Union the use of a plant bulletin board for the posting of notices. The subsidiary facts upon which the Board based its findings may be summarized as follows:

On June 28, 1954, the Board, pursuant to a consent election, certified the Union as exclusive bargaining representative of petitioner's employees in an appropriate unit consisting at the time of some 270 persons (R. 54; G. C. Ex. 1–G). Thereafter, petitioner and the Union held several bargaining conferences, on July 12, 13, and 21, and on August 9 and 19 (R. 56; 29–30). Pending the consummation of a final agreement, petitioner, pursuant to Union requests, put into effect preferential seniority for officers of the Union and the members of its bargaining committee, and granted the Union the use of a plant bulletin board for the posting of Union notices (R. 57, 62; 30, 39, G. C. Ex. 1–F, Sec. VII). The parties did not succeed in consummating a final agreement by August 19, however, and negotiations were suspended on that date subject to the call of either party for further bargaining meetings (R. 57; 30, 49–50).

On or about August 19, petitioner laid off a number of employees, and on September 10 laid off an additional number (R. 58; 31, 32–33). On the occasion of the first layoff, petitioner adhered to the preferential seniority system theretofore put into effect and retained in employment the individuals entitled to such preference (R. 57; 32–33). On September 10, however, petitioner unilaterally and without notice to the Union withdrew this preference and laid off all these individuals while keeping other employees at

work (R. 58, 65; 33, G. C. Ex. 1–F, Sec. VII). In October, petitioner (likewise without notice to the Union) discontinued its practice of permitting the Union to post notices on the plant bulletin board, nailed the bulletin board shut, and thereafter removed notices which the Union posted on plant property (R. 62–63; 39–41).

In the meantime, Corrine Smith, with the support of about a hundred of her fellow employees, filed a petition with the Regional Director of the Board asking that the Union be decertified (R. 58, 63; 26, 34–35, G. C. Ex. 3).[1] On September 15, the Regional Director advised all parties including petitioner that, since a valid election had been held and a certification issued less than three months earlier, the petition was being dismissed as untimely (R. 61, 63; 35–36, 38, 41–42, G. C. Ex. 3).[2] No appeal was taken from this dismissal.

Nevertheless, petitioner, on September 13 and thereafter, admittedly rejected repeated Union requests for further bargaining conferences on the ground that the Union no longer represented a majority of the employees in the appropriate bargaining unit (R. 58, 65; 36–38, 44–45, 48–50, G. C. Ex. 1–F, Sec. VI, R. Ex. 2, T. X. Ex. 1, R. Ex. 3, T. X. Ex. 2).

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[1] The record discloses that a number of these employees formed an independent organization known as Independent Proof Workers and that petitioner agreed to meet with representatives of that organization to discuss grievances (R. 58, 63; 41–44).

[2] Section 9 (c) (3) of the Act forbids the direction of an election "in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held."

B. *The Board's decision and order.* Upon the foregoing facts, the Board concluded, in agreement with the Trial Examiner, that petitioner violated Section 8 (a) (5) and (1) of the Act in that, less than three months after a valid certification, it refused to bargain collectively with the Union. The Board rejected petitioner's contention that the events surrounding the suspension of negotiations with the Union constituted such unusual circumstances as would justify it in refusing to bargain further (R. 64, 69). The Board concluded further that petitioner independently violated Section 8 (a) (1) of the Act by unilaterally and without notice to the Union revoking the preferential seniority previously accorded the officers of the Union and the members of its bargaining committee and denying the Union the use of the plant bulletin board for the posting of notices (R. 65, 69–70).

The Board's order requires petitioner to cease and desist from the unfair labor practices found; to bargain collectively with the Union upon request; and to post appropriate notices (R. 78–79).

C. *The decision of the court below.* The court below affirmed the Board's findings and enforced the order in full (Pet. App. 1a–5a). Relying on this Court's decision in *Brooks* v. *National Labor Relations Board*, 348 U. S. 96, the court noted that "notwithstanding repudiation of the bargaining agent by the majority of the employees, the employer was obligated to honor the certification for a reasonable period of time, normally one year" and that "there were no unusual circumstances in this case sufficient to avoid application of the one-year rule" (Pet. App. 4a, 242 F. 2d at 562).

With respect to the independent Section 8 (a) (1) violation based upon the Company's unilateral discontinuance of the preferential seniority practice and the Company's denial of the use of the bulletin board to the Union, the court held that these matters related to conditions of employment and that under established principles the Company could not change them unilaterally and without notice to the Union (Pet. 4a–5a).

ARGUMENT

1. The holding of the Court of Appeals that petitioner violated Section 8 (a) (5) and (1) of the Act by refusing to bargain with the Union, less than three months after its certification, is correct and presents no issue calling for further review by this Court. Dispositive of the issue is the decision in *Brooks* v. *National Labor Relations Board*, 348 U. S. 96, affirming the Board's rule that, absent unusual circumstances, an employer is obligated to honor the certification for a reasonable period of time, normally one year, even though a majority of the employees may have repudiated the certified union as their bargaining representative. Apart from the Union's alleged loss of majority, which under *Brooks* is immaterial, petitioner asserts that unusual circumstances existed here because of "actual instances of physical violence within the plant itself" between members of the rival groups (Pet. 10). While the record contains some evidence of friction and disputes relating to the use of the plant bulletin board by opposing factions of employees (R. 40), no evidence was adduced to support petitioner's assertion of actual physical violence. Such not-out-of-

the ordinary friction can hardly be said to constitute the kind of unusual circumstances which would excuse an employer from honoring the certification.

2. Petitioner misconceives the issue in contending that its agreement to accord preferential seniority to the Union's representative and to provide a bulletin board was merely a temporary one, and that, therefore, petitioner was free to rescind it at any time unilaterally and without notice to the Union. It is an established principle that an employer must bargain with the duly designated representative of his employees concerning changes in the terms and conditions of employment and that unilateral action in that regard is violative of Section 8 (a) (1). *May Department Stores* v. *National Labor Relations Board*, 326 U. S. 376, 383–385. And, as the court below correctly concluded, "seniority provisions and bulletin board use are among those 'conditions of employment' which the Act requires to be the subjects of collective bargaining." It is of no significance that the Company may have regarded them as temporary interim arrangements, for as the court below observed (Pet. App. 5a):

> The informal nature of their origin does not exclude them from the dignity of agreements on working conditions or render them subject to unilateral action by either party. They were temporary only in the sense that they might subsequently be changed by the parties or included in a general agreement covering all working conditions and terms of employment.

National Labor Relations Board v. *Nash-Finch Co.*, 211 F. 2d 622 (C. A. 8), relied on by petitioner (Pet.

7), is not in conflict with the ruling below. That case dealt with the wholly different issue whether the union, having entered into a comprehensive collective bargaining agreement with the employer, had in effect waived other benefits relating to terms and conditions of employment not specifically covered by the contract, so that the employer could, without further bargaining, discontinue them.

CONCLUSION

The decision of the court below is plainly correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST, 1957.

U. S. GOVERNMENT PRINTING OFFICE 1957